

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL3810 Rosin Court, Suite 150
Sacramento, CA 95834**FOR IMMEDIATE RELEASE****June 27, 2002****Contact: Carl DeWing****PR 02-14****(916) 263-7949****APPEALS COURT UPHOLDS ABC'S BAN ON LEWD CONDUCT BY
EROTIC DANCERS**

Sacramento – In a published opinion, the California Fourth District Court of Appeals has upheld a state regulation prohibiting erotic dancers from fondling breasts and genitalia while performing in bars and nightclubs licensed to sell alcoholic beverages.

The decision involved the Angels Sports Bar in the Riverside County community of Corona in which Department of Alcoholic Beverage Control (ABC) investigators observed dancers touching and fondling their bare breasts during dances. ABC filed an accusation against the bar seeking a 30 day liquor license suspension, which was appealed by the bar.

The Alcoholic Beverage Control Appeals Board overturned the Department's decision, claiming the regulation prohibiting the alleged conduct violated the dancers freedom of expression.

In overturning the Appeals Board, the District Court of Appeal said the Board erred in underestimating the state's power to impose regulations directed at undesirable "secondary effects" of certain types of entertainment and the establishments offering them.

In citing a U.S. Supreme Court decision (*California v. LaRue 1972*) the Appeals Court acknowledged that the regulation would affect some conduct protected by the First Amendment, but that California has not forbidden these performances across the board, but only in establishments licensed to sell liquor. The U.S. Supreme Court noted that the adoption of the regulation was based on substantial evidence "...that nude performances in conjunction with the sale of liquor led not only to lewd conduct by customers inside the business premises, but also to prostitution, indecent exposure, and sexual assault in the vicinity."

The Court of Appeal said information gleaned from reported cases "...confirms that establishments offering both alcohol and 'adult entertainment' still tend to attract both crime and disorderly behavior."

The Appeals Court also rejected the claim that recent court decisions made the 1972 Supreme Court decision outdated. Referring to a 1986 court decision (*City of Renton V. Playtime Theatres, Inc.*) the Appeals Court said, "The Department is not attempting to regulate or prohibit nude or erotic dancing in general. It is only attempting to reduce the problems caused by such dancing in front of customers whose inhibitions and ability to control their impulses have been weakened by the consumption of liquor. If performers at [Angels Sports Bar] feel constricted by Rule 143.3, they are free to exhibit their wares (and whatever else they wish) at clubs which do not serve alcoholic beverages."

The Appeals Court went on to rule that although the regulation may "...reach more broadly than would be permissible for a regulation of conduct in all places, it is properly applied to regulate the 'explosive' combination of liquor and sex."

The Court of Appeals annulled the Appeals Board decision, and remanded the matter back to the Board for reconsideration of the proposed 30-day suspension of the liquor license.